NO. 20746

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

See Vol. 3377

ROBERT ALAN LAWRENCE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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APPELLEE'S BRIEF

JURISDICTION AND HISTORY OF THE CASE

Appellant was charged by indictment 35368-CD filed October 13, 1965, in the United States District Court for the Central Division of the Southern District of California, with knowingly failing and neglecting to perform a duty required of him as a registrant under the Universal Military Training and Service Act and the regulations thereunder, namely, having been classified 1-A, refusing to be inducted into the armed forces as he was notified and ordered to do on June 22, 1965, in violation of United States Code, Title 50, Appendix, Section 462.

Appellant was represented by counsel at all stages of the proceedings from the time of his arraignment and plea. Jury was

duly waived, and the case was tried by the Honorable Peirson M. Hall, United States District Judge, on November 30, 1965. Appellant was found guilty on that same date and thereupon sentenced and committed for a term of three years. Notice of appeal was timely filed, and the appellant was released on bond pending appeal.

Jurisdiction of the trial court was founded upon United States Code, Title 50, Appendix, Section 462 and Title 18, Section 3231. This court has jurisdiction to review the case on appeal pursuant to Sections 1291 and 1294, Title 28, United States Code.

STATEMENT OF FACTS

At the time of trial the Government offered in evidence a photographic copy of the official Selective Service System file for the appellant, which copy had attached to it a certificate by Captain T. D. Proffitt, U. S. A. F. (Ret.), the legal custodian thereof, that it was a full, true and correct copy of the original file. Also attached was a certificate (and seal) of the Staff Secretary, Headquarters, Southern Area - Selective Service System, to the effect that Captain Proffitt had legal custody of the original file (Cf. Exhibit 1 and "CERTIFICATE" attached). This file and testimony by the appellant during trial indicated the following events with respect to the appellant's registration status in the Selective Service System:

He was registered January 19, 1962 (F. 1-2) [1] and thereafter filed a Classification Questionnaire on April 7, 1964 (F. 4-11). In the section designated "Series VIII - CONSCIENTIOUS OBJECTOR", appellant did not claim to be a conscientious objector; neither did he claim to be a full-time student in the section of said questionnaire designated "Series IX - EDUCATION" (F. 7). The Minutes of Actions by Local Board (F. 11) indicate that on June 8, 1964, appellant was classified 1-A. Notice of such classification was thereafter sent and received by appellant (F. 11 - Form 110 (Notice of Classification) sent June 11, 1964; R. T. 10). [2] Although appellant was aware of his right to appeal, no appeal was filed (F. 11; R. T. 10).

On April 26, 1965, appellant was sent an Order to Report for Induction on May 25, 1965 (F. 18). Appellant responded to this order with a letter advising the local board that he could not comply, asserting that he would not permit himself to be trained as a PROFESSIONAL KILLER (Emphasis appellant's F. 19). The Order to Report for Induction was remailed on May 14, 1965 (F. 19(a)). In a letter dated May 19, 1965, appellant requested postponement of his induction date in order that he might complete the then current school semester. This letter also contained information regarding his student status (F. 21-25). Although the letter states that appellant was accepted as a full time student at

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1/ "F." refers to Selective Service File.

2/ "R. T." refers to Reporter's Transcript of Proceedings.

San Francisco State College (F. 21), the accompanying communication from the Office of Admissions, San Francisco State College (F. 25) shows he was regarded as a continuing student, but does not specify his enrollment status. The Student Certificate from the University of Southern California indicates that on May 18, 1965, appellant was a part-time student (F. 23 - Items 2 and 3 of SSS FORM 109).

On May 20, 1965, the Local Board sent notice to appellant that induction was postponed until the June 1965 induction call date to be announced by the board. The stated reason for the postponement was to allow appellant to complete the current college semester (F. 27 and 28). The Local Board on May 26, 1965, sent appellant a notice to report for induction on June 22, 1965 (F. 30). Appellant appeared at the induction station on that date and at that time expressly refused to submit to induction on the basis of his "personal moral convictions" (F. 31-33).

Appellant requested and obtained SSS Form 150 (Special Form for Conscientious Objector) on June 28, 1965, six days after his refusal to submit to induction (F. 34). The completed form was filed with the Local Board on June 30, 1965 (F. 35-44). On that same date appellant requested reopening of his classification (R. 47).

In Series II of the Special Form for Conscientious Objector - RELIGIOUS TRAINING AND BELIEF, appellant, in Item 2 (F. 35-37) characterizes the nature of his belief as being the motion that any law (referring presumably to the Universal Military

Training and Service Act) opposing his conception of natural justice is illegal and that one is subject to the displeasure and punishment of the creator of natural law if any illegal act (violation of natural law) is committed. Such an act is classified as sinful and upsetting of nature. Man is charged to have upset nature by destructive acts and society is said presently to be "subjected to the punishment of the supreme being". Appellant proceeds to quote numerous writers expounding upon the nature of religion and religious duties. Then he indicates that he must act according to his religion. He says this without further definition as to what his religious relief involves. He concludes with a statement to the effect that his belief in a supreme being involves duties to him which are superior to those arising from any human relation.

In Item 3 (F. 38) appellant, in explaining how, when and from whom or from what source he received the training and acquired the belief which is the basis for his claim, states that he received the training and acquired the belief "by applying interpretation, organization and reason to everything in life which (he has) perceived".

In Item 4 (F. 38) appellant specifies himself as the individual upon whom he relies most for religious guidance.

Item 5 (F. 38-40) requests a statement of circumstances, if any, under which the registrant believes in the use of force. Appellant defines "force" (in the context he apparently believes it is used in the form) as "violence" i. e. the "unjust exercise of force, usually with vehemence or outrage" (F. 40). He states,

effectively, that he would never resort to violance.

Item 6 requests a description of the actions and behavior in the registrant's life which, in his opinion most conspicuously demonstrate the consistency and depth of his religious convictions. Appellant responds (F. 38 and 41) stating that whenever he has been confronted with a situation which demanded an act of force (violence) he has followed his religious convictions for guidance. To illustrate his point, he states that he has never been in a phisical fight, asserting that the circumstances involved have shown him he would have acted against his "religious convictions" otherwise. He states, in conclusion, that he has always been "an honest and sincere person".

Finally, in Item 7, there is an inquiry as to previous written or oral public expressions of the views outlined, and appellant solely cited June 28, 1965, as the occasion of expression of these views, when he uttered them in writing in the office of his attorney (F. 38).

The Local Board reviewed the material contained in appellant's Special Form for Conscientious Objector (F. 11) and advised appellant of its opinion that the facts presented did not warrant reopening or reclassification of his case (F. 72).

At trial, the appellant testified that at the time of his classification he had not crystallized certain moral convictions into religious beliefs that might constitute a basis for conscientious objection (R. T. 10). He further testified that up to the time he filed the Special Form for Conscientious Objector (June 30, 1965),

he was still in process of gathering his thoughts and crystallizing them (R. T. 11). At the time he was required to submit to induction he refused for reasons which he characterized as moral convictions against killing his fellow man (R. T. 16-17). According to his testimony, he apparently first came to the conclusion that he believed in a supreme being and had duties to such supreme being which were superior to those arising from any human relation after his refusal to submit to induction and at the time of his request for the special form on June 28, 1965 (F. 35-37; R. T. 11-17) (emphasis added).

QUESTIONS RAISED ON APPEAL

Appellant has specified two errors (See Opening Brief, p. 4): 1) The District Court erred in the admission into evidence of the Selective Service System file, and 2) The District Court erred in failing to grant the motion for judgment of acquittal.

More precisely, the following questions are raised on appeal:

1. Was a photographic copy of the official Selective Service System file for the appellant, attested by the officer having legal custody of the record as being a full, true and correct copy of the original, and accompanied by a certificate that such officer has the custody, admissible evidence of such record?

2. Did the local board illegally deny the 1-S classification in appellant's case where no evidence that he was a college

student satisfactorily pursuing a full-time course was submitted?

3. Was the trial court required to consider evidence of conscientious objection to military service where the appellant did not initially claim to be a conscientious objector and never indicated to the local board prior to and including the time he refused to submit to induction that he was a conscientious objector?

4. Assuming that the action of the local board in refusing to reopen classification on a claim of conscientious objection presented after appellant's refusal to submit to induction was relevant to the issue of his guilt;

a. Did the local board abuse its discretion in declining to reopen classification after appellant's refusal to submit to induction, in the absence of evidence of any change of status resulting from circumstances over which appellant had no control?

b. Did the local board abuse its discretion in concluding that the new facts presented by appellant relative to his purported religious belief did not warrant reopening or reclassification?

ARGUMENT

I THE TRIAL COURT PROPERLY ADMITTED INTO EVIDENCE THE CERTIFIED PHOTOGRAPHIC COPY OF APPELLANT'S OFFICIAL SELECTIVE SERVICE FILE.

Rule 44(a), Federal Rules of Civil Procedure, provides that an official record or an entry therein, when admissible for any purpose, may be evidenced by a copy attested by the officer having legal custody of the record, and accompanied with a certificate that such office in which the record is kept is within the United States, the certificate may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office.

Title 28, United States Code, Section 1733 provides that records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept. Rule 1733 also provides that properly authenticated copies of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.

Rule 27, Federal Rules of Criminal Procedure provides that an official record or any entry therein may be proved in the same manner as in civil actions.

Appellant contends the trial court committed error by admitting into evidence a bound photographic copy of his original selective service file. This document had been attested and certified in compliance with the above mentioned rules of procedure (See Exhibit 1). It is not clear upon what grounds appellant contends the document fell short of conformance with applicable laws relating to its admission in evidence. It suffices to point out that this circuit has previously approved the proposition that a duly authenticated copy of the registrant's selective service file is admissible in a prosecution for violation of Title 50 Appendix United States Code, Section 462.

Yaich v. United States, 283 F. 2d 613
(9 Cir. 1960);

Kariakin v. United States, 261 F. 2d 263
(9 Cir. 1958);

La Porte v. United States, 300 F. 2d 878
(9 Cir. 1962);

Olender v. United States, 210 F. 2d 795
(9 Cir. 1954).

See also:

United States v. Borisuk, 206 F. 2d 338
(3 Cir. 1953).

II AT THE TIME APPELLANT WAS ORDERED TO REPORT FOR INDUCTION INTO MILITARY SERVICE HE WAS PROPERLY CLASSIFIED 1-A.

32 Code of Federal Regulations, Section 1622.10 provides that every registrant who has failed to establish to the satisfaction of the local board, subject to appeal, that he is eligible for classification in another class, shall be placed in class 1-A: "Available for military service."

It is the local board's responsibility to decide, subject to appeal, the class in which each registrant shall be placed. Each registrant is considered as available for military service until his eligibility for deferment or exemption from military service is clearly established to the satisfaction of the local board. 32 Code of Federal Regulations, Section 1622.1(c).

It apparently is not argued that the information contained in appellant's classification questionnaire (F. 4-11) justified any classification but that of 1-A. Series VIII of the questionnaire (F. 7) does not reflect a claim to be a conscientious objector, and Series IX (F. 7) does not contain an assertion that appellant was a full-time student. No other basis for determent or exemption was shown.

A. The Local Board Was Not Required to Consider Appellant For Student Deferment and Placement in Class 1-S When He Submitted No Evidence That He Was a College Student Satisfactorily Pursuing a Full-Time Course.

The Universal Military Service and Training Act (1951), as amended, Section 6(i)(2) and 32 Code of Federal Regulations, Section 1622.15(b) provide that any registrant who, while satisfactorily pursuing a full-time course of instruction at a college or university, is ordered to report for induction during the academic year, shall be placed in classification 1-S.

Appellant would persuade the court to believe that the local board should have classified him 1-S after he was ordered to report for induction, but in lieu thereof granted him a postponement of induction. He claims that the local board considered such action to be equivalent to classification 1-S. (There is no such indication in the record.)

Appellant's order to report for induction was sent to him on April 26, 1965. After appellant notified the local board of his inability to comply with the induction order, because he would not permit himself to be trained as a "professional killer", the order was remailed and appellant thereafter specifically requested pontponement of his induction date in order that he might complete the current semester (F. 18-23). It is noteworthy that appellant did not request reclassification as 1-S. He did not submit any evidence that he was a full-time student in any college or university.

The Student Certificate from the University of Southern California (F. 23 - items 2 and 3) clearly describes his status as a part-time, not a full-time student.

The notice from San Francisco State College showing that appellant was regarded as a continuing student does not describe his enrollment status, as indeed it could not since he had not at that time enrolled in a continuing course of study (F. 21). Appellant was not qualified for consideration unless he received a notice to report for induction during the academic year while engaged in a full-time course of study. The appellant not being enrolled in courses at San Francisco State College at the time the induction order was received, could not rely on any status in that school as a basis for 1-S classification. It is evident that appellant was not entitled to 1-S classification, and the local board was justified in not so classifying appellant.

Appellant complains that he was deprived of an opportunity to submit a conscientious objector form because he was not reclassified 1-S. He maintains that a 1-S classification would have cancelled the order to report for induction, and he would eventually be reclassified 1-A, affording an opportunity to perfect an administrative appeal.

It is significant that appellant makes no contention that he desired to establish a conscientious objector's claim at that time. In his testimony at trial, he indicated that his religious views had not "crystallized" until sometime in June, a time subsequent to his request for postponement. Indeed, at the time of the request

for postponement of induction appellant had apparently accepted the prospect of induction. Whether he would have submitted a conscientious objector's claim if classified 1-S is entirely speculative. The contention now that he would have done so is manifestly self-serving.

In any event, the administrative remedies to which appellant failed to avail himself are no criteria for judging the validity of the action of the board. The sole question is whether or not appellant qualified for a 1-S classification, and the evidence clearly shows he was ineligible.

III EVIDENCE OF APPELLANT'S ATTEMPT TO OBTAIN RECLASSIFICATION AFTER HIS REFUSAL TO SUBMIT TO INDUCTION IS IRRELEVANT TO THE QUESTION OF WHETHER HIS REFUSAL CONSTITUTED A VIOLATION OF LAW.

The trial court was not required to consider action of the local board relative to a claim of conscientious objection filed after appellant's refusal to submit to induction. Evidence of such action was no relevancy as a defense to the criminal conduct charged. Appellant seeks to create the illusion that action of the board violated due process of law with respect to his classification and thereby rendered the order to report for induction illegal. However, the action of the board was unassailable when considered in view of the evidence it had before it at all times preceding appellant's refusal to submit to induction.

Unexceptionally, in the cases cited by appellant to support his position, the registrant has made some effort to lay a factual basis for his objection to induction before the time he is ordered to submit to induction. Appellant made no effort to establish a claim as a conscientious objector prior to his refusal to submit to induction. He seeks to explain this omission by an extraordinary argument posed by counsel at trial (R. T. 19).

The proposition suggested was that prior to the time appellant was ordered to report for induction he possessed a religious belief upon which was based a conscientious objection qualifying him for exemption from military service (R. T. 19). What prevented appellant from making this circumstance known to the local board? Counsel's argument was that appellant was not aware of what entitled a registrant under the law to exemption on the basis of conscientious objection (R. T. 19). But, appellant, in his testimony, asserted that his views had not crystallized prior to June 1965 (R. T. 10). We are thus urged to the conclusion that appellant was simply not aware that his views were actually attributable to a religious belief, thus disabling him from articulating his convictions in terms of such a belief. Even if he perceived the religious character of his convictions, the argument proceeds, he could not have seized the opportunity to exercise his rights, because he was not aware that his views qualified for conscientious objector's status. The board cannot be criticized for acting reasonably upon information available to it. The case should be evaluated on the basis of 1) the local board's action up to the time

of induction, and 2) the appellant's behavior in defiance of the board's action. (See Cox v. United States, 332 U.S. 442, 454 (1947).

Appellant implies that the consideration of his case should now be broadened to comprehend assessment of events occurring after his refusal to submit to induction. Should the local board have perceived the possibility that appellant's conscientious objector's claim might reveal a former status different from that indicated by previously submitted evidence? Was the local board then expected to nullify the induction order and disregard appellant's refusal to submit, pending evaluating of his implicit claim of previous and continuing conscientious objection? Would such an approach promote orderly administration of the Act? Would not such an approach open the door to spurious claims of prior exempt status, nullifying previously executed induction processes?

The probability of claims of eligibility for exemption being submitted after mailing of the order to report for induction was anticipated by regulation. 32 Code of Federal Regulations, Section 1625.2 provides that the classification of a registrant shall not be reopened after the local board has mailed the registrant an order to report for induction, unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which he has no control. This regulation has been upheld as applying to requests to reopen on claim of conscientious objection. Wyman v. La Rose, 223 F.2d 849 (9 Cir. 1955); Feuer v. United States, 208 F.2d 719 (9 Cir. 1955); United

States v. Biesiada, 247 F. Supp. 599 (S. D. N. Y. 1965). In Keene v. United States, 266 F. 2d 378 (10 Cir. 1959), the court stated at pages 383-384:

> "It does not seem unreasonable or derogatory to the spirit and purpose of the exempting statute to provide by regulation that no request for reopening and reclassification shall be entertained after notice to report for induction is mailed. Otherwise, the whole machinery of the selective service process may conceivably be disrupted by last minute changes in status for purposes of avoidance. Such is the manifest purpose of the proviso in Regulation 1625.2. We think the Regulations have application to a conscientious objector's claim as all other claims for a change in status. It seems also entirely consistent with the procedural safeguards provided in the selective service process to say that the circumstances relied upon to show a change in status must have occurred after the induction notice was mailed."

The evidence introduced at trial thus clearly establishes the appellant's guilt. Any evidence purporting to show conscientious objection which was submitted after refusal to submit to induction, the principal unlawful act, is irrelevant and not entitled to consideration as a defense to the charge. The trial court did not therefore err in denying the motion for judgment of acquittal.

IV ASSUMING ARGUENDO THAT SUBSEQUENT ACTION BY THE BOARD WAS RELEVANT TO THE ISSUE OF APPELLANT'S GUILT, AND THE TRIAL COURT SHOULD HAVE CONSIDERED THE LEGALITY OF THE LOCAL BOARD'S ACTION IN DECLINING TO REOPEN APPELLANT'S CLASSIFICATION, THERE WAS NO VIOLATION OF DUE PROCESS OF LAW.

On June 22, 1965, appellant refused to submit to induction (F. 31). On June 30, 1965, he filed a special form for conscientious objector along with a written request that his classification be reopened (F. 35-44, 47). The local board mailed a notice to appellant on July 12, 1965, indicating that it had considered the new facts presented by him and reached the opinion that reopening or reclassification was not warranted (F. 72). The Minutes of Action by the Local Board (F. 11) indicate that all three members of the board met and reviewed appellant's status after receipt of the completed conscientious objector form, and voted unanimously not to reopen.

Appellant charges that the local board abused its discretion in declining to reopen his classification and thereby deprived him of the right to appellate review of his classification. There is no quarrel with the principle that arbitrary and capricious action by a local board in refusing to reopen a classication constitutes a violation of due process of law and is action in excess of its jurisdiction, but the cases cited by appellant afford no helpful guidelines here. The two District Court cases cited shed no light, for instead of outlines of pertinent facts, appellant has supplied the legal

conclusions of the court (Appellant's Opening Brief, pp. 16-17).

The local board shall not reopen a registrant's classification when, upon a registrant's written request to reopen and consider anew his classification, the facts presented would not in the opinion of the board justify a change in classification. 32 Code of Federal Regulations, Section 1925.4. The classification of a registrant shall not be reopened after the local board has mailed the registrant an order to report for induction unless the local board first specifically finds there has been a change in registrant's status resulting from circumstances over which he has no control. 32 Code of Federal Regulations, Section 1625.2.

There was no evidence of a change in appellant's status before the board at the time it reviewed the new facts presented by him. Appellant has the burden to establish his right to an exemption. Fleming v. United States, 344 F.2d 912 (10 Cir. 1965). It is submitted that it is also incumbent upon the registrant to present evidence of a change in status resulting from circumstances over which he has no control if he seeks to have his classification reopened after mailing of the order to report for induction. It would appear that appellant was less than diligent, and under the circumstances has a heavier burden of persuasion where he has made no effort to have the board reconsider his classification until after committing the act charged herein to be a violation of law. His special form for conscientious objector fails under the most careful scrutiny to reveal anything suggesting a change in status. On the other hand, it indicates the presence of an unarticulated

attitude which arguably has persisted for some substantial period of time.

Appellant may propose that a change in status beyond his control occurred on June 28, 1965; he realized he possessed a religious belief which he theretofore mistakenly assumed was inadequate to form a basis for exemption. No such evidence was before the board, however, and the inquiry here is whether or not the board had a basis in fact to support its action. See Cox v. United States, 332 U.S. 442, 454 (1947).

Absent any change in status resulting from circumstances over which appellant had no control, the board cannot reopen classification. It is submitted that the case is controlled by this court's previous ruling in Boyd v. United States, 269 F.2d 607 (9 Cir. 1959), which involved a tardy claim of conscientious objection and refusal to reopen classification. See also United States v. Monroe, 150 F.Supp. 785 (S.D. Cal. 1957).

The appellant's position that the prompting of a registrant's conscience constitute a change of status over which the registrant has no control was also considered in United States v. Schoebal, 301 F.2d 31 (7 Cir. 1953). There the court held that such a view would require so strained an interpretation of the applicable regulations that reason dictated its complete rejection.

If it is found that there was evidence supporting a specific finding of a change in appellant's status beyond his control, the question remains whether the board acted in excess of its jurisdiction in concluding that the new facts presented by the appellant did

not warrant reopening or reclassification.

The question of jurisdiction is reached only if there is no basis in fact for the board's opinion and for continuing appellant in class 1-A. See Estep v. United States, 327 U.S. 114 (1946). The task of the courts is to search the record for some affirmative evidence to support the local board's finding, and the courts may properly insist that there be some proof that is incompatible with the registrant's proof of exempt status. His own admissions may be considered by the board as a basis for an inference as to appellant's sincerity and as to qualification of his professed conscientious objection in terms of statutory requirements. Dickinson v. United States, 346 U.S. 389, 396-397 (1953); Witmer v. United States, 348 U.S. 375 (1955).

Therefore, if a review of the record before the board indicates any basis in fact for the board's conclusion that appellant's professed belief failed to meet the test of United States v. Seeger, 380 U.S. 163 (1964), that it was a sincere and meaningful belief which occupied in the appellant's life a place parallel to that filled by the God of those admittedly qualifying for the exemption, judicial inquiry is at an end and the decision of the board must be considered on the evidence as having been made in conformity with applicable regulations and final, even though it may have been erroneous. Estep v. United States, supra, pages 122-123.

Serious question as to the appellant's sincerity is raised by the inconsistencies in his own statements and position. The fact that he made no effort to establish his claim until after refusal

to submit to induction suggests the probability that he has resorted to the expedient of filing a conscientious objector claim to evade military service and criminal penalty.

He was a member of the Air Force Reserve Officer's Training Corps at the University of California at Los Angeles during the first year of his attendance (1961) (F. 42-43). This fact, admitted by appellant on his conscientious objector form, indicates the absence of any conscientious objection at that time. Yet he claims he has always been opposed to use of force (violence) because of an awareness that he would be acting against his religious convictions (emphasis added) (F. 38, Item 6, page 41). When appellant refused to submit to induction he stated his refusal was based on personal moral convictions (emphasis added) (F. 33). This position was reiterated during the trial in response to the trial court's questions (R. T. 16-17). According to appellant's testimony it appears that his convictions did not become crystallized into religious beliefs until he submitted his conscientious objector claim, after his refusal to submit (R. T. 10-11) (emphasis added). Thus a basis in fact appears in the evidence submitted by appellant that he was not sincere in claiming previously to have held a religious belief which involved duties motivating him conscientiously to object to military service.

Religious training and belief, in the context of conscientious objection entitling a registrant to exemption from military service, excludes essentially political, sociological, or philosophical views or a merely personal moral code. Title 50, Appendix, United States

Code, Section 462.

Appellant claims a belief in a supreme being, a creator of natural law, who may become displeased at violations of natural law (acts of violence, as defined by appellant) and punish the offender (F. 35, Item 2, pages 35-37). Yet he states he received his "training" and acquired the belief which is the basis for his claim by "applying interpretation, organization and reason to everything in life which (he has) perceived" (F. 38, Item 3), and that the individual upon whom he relies most for religious guidance is himself (F. 38, Item 4). Finally, he states he has expressed his views publically, apparently for the first time, in an attorney's office, after his refusal to submit to induction (F. 38, Item 7).

There is sufficient evidence in appellant's claim to form a basis for the inference that appellant's beliefs were actually rationalized, intellectual in their origin, and moral in their fundamental significance. The basis exists for the further inference that the views described were not religious in nature, because they appeared not to occupy in the mind of appellant a place parallel to that filled by God of those admitted qualified for the exemption. The evidence presented therefore supports the conclusion that appellant has described a personal moral code and philosophy, rather than a religious belief.

Taking all of these factors into consideration it is apparent that the local board had a basis in fact for their opinion that the facts presented did not warrant reopening of reclassification. It is submitted therefore, that the action of the board was not a violation

of due process of law.

CONCLUSION

The conviction should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Robert L. Brosio

ROBERT L. BROSIO